



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: Tampa

Date: NOV 1 2000

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was denied by the District Director, Tampa, Florida. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on February 1, 2000. The petitioner is a 53 year-old married citizen of the United States, who had one previous marriage. The beneficiary, who at this time is 11 years of age, was born in Gujarat, India, on December 25, 1988. The beneficiary's biological parents, [REDACTED] and [REDACTED]

[REDACTED] are still living. The district director denied the petition after determining that the beneficiary does not meet the statutory definition of "orphan" since she has two living, legal parents who have not abandoned her.

On appeal, the petitioner states that Indian adoption law requires both biological parents presence and permission for adoption.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption...

The regulation at 8 C.F.R. 204.3(b) states:

"abandonment by both parents" means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or

an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

In this case, the beneficiary has two living, legal parents. The adoption decree states in pertinent part that:

1. This application has been filed by the applicant under Sec. 9 of Hindu Adoption and Maintenance Act, for permission of the court to give her daughter [REDACTED] to [REDACTED] and [REDACTED] who are now citizens of the United States of America.

2. The applicant has urged in her application that the permission be granted to give her daughter [REDACTED] aged about 11 years in adoption to [REDACTED] and [REDACTED] ...

4. In support of her application, the applicant, [REDACTED] has stepped into the witness box and led her oral evidence...She has categorically stated the above facts in her evidence.

5. [REDACTED] being husband of the applicant, has also stepped into the witness box and led his oral evidence...He has also categorically stated the above facts in his evidence.

As stated previously, a relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Consequently, the petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act.

The petitioner states on appeal that Indian adoption law requires both biological parents presence and permission for adoption. However, no evidence has been submitted to substantiate this assertion.

Beyond the decision of the director, the petition cannot be approved for other reasons. The record does not contain proof of termination of the petitioner's previous marriage.

The burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter

of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.